

Memorandum

To: Mark Dietrich, Regional Administrator
John Kirkpatrick, Engineering Manager

From: Tom Hepworth

Date: May 5, 2005

Re: Staff Report for Modifications to Wastewater-Land Application Permit, WLAP #LA-000031-03 for the J.R. Simplot Co. Aberdeen Plant

Purpose

The purpose of this memorandum is to satisfy the requirements of IDAPA 16.01.17.400.04 (Wastewater-Land Application Permit Regulations) for issuing process water land application permits. It states the principal facts and significant questions considered in preparing the draft permit conditions and provides a summary of the basis for the draft permit. The analysis references applicable requirements and supporting materials as appropriate.

Executive Summary

Following an extensive negotiated permit development process and a thirty (30) day public review and comment period, the Department issued #LA-000031-03 allowing the J.R. Simplot Co. (Simplot) to utilize land application for the beneficial reuse of potato processing wastewater on approximately 1272 acres of farm land located in and/or near the City of Aberdeen in Bingham County.

Within thirty (30) days following permit issuance, Simplot exercised its right pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality" to contest certain components of the permit and seek administrative remedies from the Board. In essence, Simplot maintained that some management plans and/or planning documents should not have been incorporated by reference into the permit and made fully enforceable as part of the permit. As a result of negotiations, it also became necessary to revise permit language dealing with buffer zone issues in the permit.

Following an additional period of negotiation, the Department and Simplot came to agreement regarding specific modifications to the permit and a *draft* permit, with modifications was published for further public review and comment on May 9, 2005.

Staff recommends the issuance of #LA-000031-03 as attached.

Staff Report

1. Summary of Events _____

Following is a summary of significant events associated with issuance of a wastewater-land application permit for the J.R. Simplot Co. Aberdeen Plant.

- November 1, 2000 – The J.R. Simplot Co. submitted notice of intent to apply for renewal of the permit in accordance with applicable requirements. The initial renewal application did not include the Pratt Site and was determined to be incomplete.
- April 30, 2001 – The Department issued an administrative permit extension pending the Permittee's acquisition of expansion acreage and preparation of site characterization and management documentation.
- May 28, 2002 – The Permittee and the Department entered a voluntary Consent Order to address hydraulic and constituent loading and ground water quality issues at the Original and Knudsen locations. The Consent Order required the Permittee to proceed with development of additional treatment capacity (Pratt Site) and to prepare and submit a ground water investigation report to address ground water quality concerns. The Permittee was also required to prepare and submit a revised permit renewal application (site characterization and management report).
- May 30, 2002 – The Department received an initial application for permit renewal that incorporated the Pratt Site. The permit renewal application was determined to be incomplete.
- April 17, 2003 – The Permittee and the Department signed an Amended Consent Order extending certain compliance timelines from the May 28, 2002 Consent Order. The extensions were necessary to reflect exigencies in the Permittee's attempts to gain operational control at the Pratt Site.
- July 15, 2003 – The Department received a revised application for permit renewal. This revision incorporated the Permittee's long range plan to install advanced treatment equipment (anaerobic digester) at the Aberdeen plant.
- March 18, 2004 – The Department determined that the permit renewal application was complete and issued a *draft* permit.
- July 1, 2004 – The Department issued #LA-000031-03 with accompanying staff report.
- August 17, 2004 – The J.R. Simplot Co. filed a Petition for Contested Case Review and Hearing with Board of Environmental Quality. In its petition, Simplot sought Board review of certain terms in the WLAP permit issued by the Department. Simplot requested that the Board remove provisions relating to the enforceability of certain documents referenced in the permit.
- September 9, 2004 – The Department responded to the petition.
- April 27, 2005 – The Department and Simplot came to an agreement regarding specific modifications to #LA-000031-03.
- April 27, 2005 – A Stipulation for Dismissal regarding the Contested Case was filed and an Order entered by the Hearing Officer. A condition of settlement is that the Department expeditiously prepare and release a *draft* permit (with agreed upon modifications) for a thirty (30) day public review and comment period.
- May 9, 2005 – The Department published a *draft* permit for a thirty (30) day public review and comment period.

2. Discussion

Following is a summary of modifications that were made to #LA-00031-03:

- The "Buffer Zone Plan" and the "TDS Management Plan" were removed from the list of Reference Documents on page 3. Entries for a "Sampling and Analysis Plan" and a "Water Quality Improvement Plan" were added to the list.
- Language in the paragraph following the list of Reference Documents was modified such that items in the list will require Department approval only. The words "and are enforceable as such" were deleted from the paragraph.

- Section note E-3 was modified such that, upon approval by the Department, the Sampling & Analysis Plan, the Odor Management Plan and the Waste Solids Management Plan shall be incorporated by reference and enforceable as part of the Permit. Other items listed as Reference Documents, that are required to be submitted to and approved by the Department pursuant to Section E. Table E-1 shall be, once approved, implemented by the Permittee, but shall not be enforceable as part of the permit.
- The entry for a Buffer Zone Plan was removed from the list of items required in CA-031-02, a compliance requirement in Table E-1.
- Language in CA-031-03, regarding submittal and regulatory review processes for certain plans and Permittee activities was modified. Compliance dates were modified accordingly.
- Table F-4, Buffer zone Requirements, was modified to specify separation distances between wastewater-land application areas and certain features of interest as depicted on maps supplied by Simplot and attached to the permit. The Department must specifically approve certain reduced separation distances where physical barriers are proposed or designated on the attached maps.

3. Conclusions and Recommendations

Staff recommends the re-issuance of #LA-000031-03 as attached following the requisite public review and comment period.